

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

July 26, 2005

Purpose: To apply and provide for expansion of the current FTC safeguard rules, and for other purposes.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—109TH Cong., 1ST Sess.**

S. 1408, 109TH Congress, 1ST Session

JULY 28, 2005

INTENDED to be proposed by Mr. _____

Viz: Strike out all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Identity Theft Protection Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Protection of sensitive personal information.
- Sec. 3. Notification of security breach risk.
- Sec. 4. Security freeze.
- Sec. 5. Enforcement.
- Sec. 6. Enforcement by State attorneys general.
- Sec. 7. Preemption of State law.
- Sec. 8. Social security and driver’s license number protection.
- Sec. 9. Information security working group.
- Sec. 10. Definitions.
- Sec. 11. Authorization of appropriations.
- Sec. 12. Related crime study.
- Sec. 13. Effective dates.

1 **SEC. 2. PROTECTION OF SENSITIVE PERSONAL INFORMA-**
2 **TION.**

3 (a) IN GENERAL.—A covered entity shall develop, im-
4 plement, maintain, and enforce a written program for the
5 security of sensitive personal information the entity col-
6 lects, maintains, sells, transfers, or disposes of, containing
7 administrative, technical, and physical safeguards—

8 (1) to ensure the security and confidentiality of
9 such data;

10 (2) to protect against any anticipated threats or
11 hazards to the security or integrity of such data; and

12 (3) to protect against unauthorized access to, or
13 use of, such data that could result in substantial
14 harm to any individual.

15 (b) COMPLIANCE WITH FTC STANDARDS RE-
16 QUIRED.—A covered entity that is in full compliance with
17 the requirements of the Commission’s rules on Standards
18 for Safeguarding Customer Information and Disposal of
19 Consumer Report Information and Records is deemed to
20 be in compliance with the requirements of subsection (a).

21 (c) REGULATIONS.—Not later than 1 year after the
22 date of enactment of this Act, the Commission shall pro-
23 mulgate regulations that require procedures for authen-
24 ticating the credentials of any third party to which sen-
25 sitive personal information is to be transferred or sold by
26 a covered entity.

1 **SEC. 3. NOTIFICATION OF SECURITY BREACH RISK.**

2 (a) SECURITY BREACHES AFFECTING 1,000 OR
3 MORE INDIVIDUALS.—

4 (1) IN GENERAL.—If a covered entity discovers
5 a breach of security that affects 1,000 or more indi-
6 viduals, then, before conducting the notification re-
7 quired by subsection (c), it shall—

8 (A) report the breach to the Commission
9 (or other appropriate Federal regulator under
10 section 5); and

11 (B) notify all consumer reporting agencies
12 described in section 603(p)(1) of the Fair Cred-
13 it Reporting Act (15 U.S.C. 1681a(p)(1)) of the
14 breach.

15 (2) FTC WEBSITE PUBLICATION.—Whenever
16 the Commission receives a report under paragraph
17 (1)(A), after the notification required by subsection
18 (c) it shall post a report of the breach of security
19 on its website without disclosing any sensitive per-
20 sonal information pertaining to the individuals af-
21 fected (including their names).

22 (b) SECURITY BREACHES AFFECTING FEWER THAN
23 1,000 INDIVIDUALS.—

24 (1) IN GENERAL.—If a covered entity discovers
25 breach of security that affects the sensitive personal
26 information of fewer than 1,000 individuals and de-

1 termines that the breach of security does not create
2 a reasonable risk of identity theft, it shall report the
3 breach to the Commission (or other appropriate
4 Federal regulator under section 5).

5 (2) REPORT CONTENTS.—The report shall con-
6 tain the number of individuals affected and the type
7 of information that was exposed because of the
8 breach of security.

9 (3) LIMITATION ON COMMISSION RESPONSE.—
10 With respect to a report under paragraph (1) re-
11 ceived by the Commission, the Commission may
12 not—

13 (A) disclose any sensitive personal informa-
14 tion relating to the individuals (including their
15 names); or

16 (B) publish such a report on its website.

17 (c) NOTIFICATION OF CONSUMERS.—A covered enti-
18 ty shall use due diligence to investigate any suspected
19 breach of security affecting sensitive personal information
20 maintained by that covered entity. If, after the exercise
21 of such due diligence, the covered entity discovers a breach
22 of security and determines that the breach of security cre-
23 ates a reasonable risk of identity theft, the covered entity
24 shall notify each such individual. In determining whether
25 a reasonable risk of identity theft exists, the covered entity

1 shall consider such factors as whether the data containing
2 sensitive personal information is usable by an unauthor-
3 ized third party and whether the data is in the possession
4 and control of an unauthorized third party who is likely
5 to commit identity theft.

6 (d) METHODS OF NOTIFICATION; NOTICE CON-
7 TENT.—Within 1 year after the date of enactment of this
8 Act, the Commission shall promulgate regulations in ac-
9 cordance with section 553 of title 5, United States Code,
10 that establish methods of notification to be followed by
11 covered entities in complying with the requirements of this
12 section and the content of the notices required. In promul-
13 gating those regulations, the Commission shall take into
14 consideration the types of sensitive personal information
15 involved, the nature and scope of the security breach,
16 other appropriate factors, and the most effective means
17 of notifying affected individuals.

18 (e) TIMING OF NOTIFICATION.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), notice required by subsection (c) shall be
21 given—

22 (A) in the most expedient manner prac-
23 ticable, but not later than 90 days after the
24 date on which the breach of security was discov-
25 ered by the covered entity; and

1 (B) in a manner that is consistent with
2 any measures necessary to determine the scope
3 of the breach and restore the security and in-
4 tegrity of the data system.

5 (2) LAW ENFORCEMENT AND HOMELAND SECU-
6 RITY RELATED DELAYS.—Notwithstanding para-
7 graph (1), the giving of notice as required by that
8 paragraph may be delayed for a reasonable period of
9 time if—

10 (A) a Federal or State law enforcement
11 agency determines that the timely giving of no-
12 tice under subsections (a) and (c), as required
13 by paragraph (1), would materially impede a
14 civil or criminal investigation; or

15 (B) a Federal national security or home-
16 land security agency determines that such time-
17 ly giving of notice would threaten national or
18 homeland security.

19 (f) CERTAIN SERVICE PROVIDERS.—The preceding
20 provisions of this section do not apply to electronic com-
21 munication of a third party stored by a cable operator,
22 information service, or telecommunications carrier in the
23 network of such operator, service or carrier in the course
24 of transferring or transmitting such communication.

1 **SEC. 4. SECURITY FREEZE.**

2 (a) IN GENERAL.—

3 (1) EMPLACEMENT.—A consumer may place a
4 security freeze on his or her credit report by making
5 a request to a consumer credit reporting agency in
6 writing, by telephone, or through a secure electronic
7 connection made available by the consumer credit re-
8 porting agency.

9 (2) CONSUMER DISCLOSURE.—If a consumer
10 requests a security freeze, the consumer credit re-
11 porting agency shall disclose to the consumer the
12 process of placing and removing the security freeze
13 and explain to the consumer the potential con-
14 sequences of the security freeze.

15 (b) EFFECT OF SECURITY FREEZE.—

16 (1) RELEASE OF INFORMATION BLOCKED.—If a
17 security freeze is in place on a consumer's credit re-
18 port, a consumer reporting agency may not release
19 information from the credit report to a third party
20 without prior express authorization from the con-
21 sumer.

22 (2) INFORMATION PROVIDED TO THIRD PAR-
23 TIES.—Paragraph (2) does not prevent a consumer
24 credit reporting agency from advising a third party
25 that a security freeze is in effect with respect to the
26 consumer's credit report. If a third party, in connec-

1 tion with an application for credit, requests access to
2 a consumer credit report on which a security freeze
3 is in place, the third party may treat the application
4 as incomplete.

5 (3) CONSUMER CREDIT SCORE NOT AF-
6 FECTED.—The placement of a security freeze on a
7 credit report may not be taken into account for any
8 purpose in determining the credit score of the con-
9 sumer to whom the account relates.

10 (c) REMOVAL; TEMPORARY SUSPENSION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (4), a security freeze shall remain in place
13 until the consumer requests that the security freeze
14 be removed. A consumer may remove a security
15 freeze on his or her credit report by making a re-
16 quest to a consumer credit reporting agency in writ-
17 ing, by telephone, or through a secure electronic con-
18 nection made available by the consumer reporting
19 agency.

20 (2) CONDITIONS.—A consumer credit reporting
21 agency may remove a security freeze placed on a
22 consumer's credit report only—

23 (A) upon the consumer's request, pursuant
24 to paragraph (1); or

1 (B) if the agency determines that the con-
2 sumer's credit report was frozen due to a mate-
3 rial misrepresentation of fact by the consumer.

4 (3) NOTIFICATION TO CONSUMER.—If a con-
5 sumer credit reporting agency intends to remove a
6 freeze upon a consumer's credit report pursuant to
7 paragraph (2)(B), the consumer credit reporting
8 agency shall notify the consumer in writing prior to
9 removing the freeze on the consumer's credit report.

10 (4) TEMPORARY SUSPENSION.—A consumer
11 may have a security freeze on his or her credit re-
12 port temporarily suspended by making a request to
13 a consumer credit reporting agency in writing or by
14 telephone and specifying beginning and ending dates
15 for the period during which the security freeze is not
16 to apply to that consumer's credit report.

17 (d) RESPONSE TIMES; NOTIFICATION OF OTHER EN-
18 TITIES.—

19 (1) IN GENERAL.—A consumer credit reporting
20 agency shall—

21 (A) place a security freeze on a consumer's
22 credit report under subsection (a) no later than
23 5 business days after receiving a request from
24 the consumer under subsection (a)(1); and

1 (B) remove, or temporarily suspend, a se-
2 curity freeze within 3 business days after re-
3 ceiving a request for removal or temporary sus-
4 pension from the consumer under subsection
5 (c).

6 (2) NOTIFICATION OF OTHER COVERED ENTI-
7 TIES.—If the consumer requests in writing or by
8 telephone that other covered entities be notified of
9 the request, the consumer reporting agency shall no-
10 tify all other consumer reporting agencies described
11 in section 603(p)(1) of the Fair Credit Reporting
12 Act (15 U.S.C. 1681a(p)(1)) of the request within 3
13 days after placing, removing, or temporarily sus-
14 pending a security freeze on the consumer's credit
15 report under subsection (a), (c)(2)(A), or subsection
16 (c)(4), respectively.

17 (3) IMPLEMENTATION BY OTHER COVERED EN-
18 TITIES.—A consumer reporting agency that is noti-
19 fied of a request under paragraph (2) to place, re-
20 move, or temporarily suspend a security freeze on a
21 consumer's credit report shall—

22 (A) request proper identification from the
23 consumer, in accordance with subsection (f),
24 within 3 business days after receiving the notifi-
25 cation; and

1 (B) place, remove, or temporarily suspend
2 the security freeze on that credit report within
3 3 business days after receiving proper identi-
4 fication and a reasonable fee from the consumer
5 as permitted under subsection (h).

6 (e) CONFIRMATION.—Except as provided in sub-
7 section (c)(3), whenever a consumer credit reporting agen-
8 cy places, removes, or temporarily suspends a security
9 freeze on a consumer's credit report at the request of that
10 consumer under subsection (a) or (c), respectively, it shall
11 send a written confirmation thereof to the consumer with-
12 in 10 business days after placing, removing, or temporarily
13 suspending the security freeze on the credit report. This
14 subsection does not apply to the placement, removal, or
15 temporary suspension of a security freeze by a consumer
16 reporting agency because of a notification received under
17 subsection (d)(2).

18 (f) ID REQUIRED.—A consumer credit reporting
19 agency may not place, remove, or temporarily suspend a
20 security freeze on a consumer's credit report at the con-
21 sumer's request unless the consumer provides proper iden-
22 tification (within the meaning of section 610(a)(1) of the
23 Fair Credit Reporting Act (15 U.S.C. 1681h) and the reg-
24 ulations thereunder.

1 (g) EXCEPTIONS.—This section does not apply to the
2 use of a consumer credit report by any of the following:

3 (1) A person or entity, or a subsidiary, affiliate,
4 or agent of that person or entity, or an assignee of
5 a financial obligation owing by the consumer to that
6 person or entity, or a prospective assignee of a fi-
7 nancial obligation owing by the consumer to that
8 person or entity in conjunction with the proposed
9 purchase of the financial obligation, with which the
10 consumer has or had prior to assignment an account
11 or contract, including a demand deposit account, or
12 to whom the consumer issued a negotiable instru-
13 ment, for the purposes of reviewing the account or
14 collecting the financial obligation owing for the ac-
15 count, contract, or negotiable instrument.

16 (2) Any Federal, State or local agency, law en-
17 forcement agency, trial court, or private collection
18 agency acting pursuant to a court order, warrant,
19 subpoena, or other compulsory process.

20 (3) A child support agency or its agents or as-
21 signs acting pursuant to subtitle D of title IV of the
22 Social Security Act (42 U.S.C. et seq.) or similar
23 State law.

24 (4) The Department of Health and Human
25 Services, a similar State agency, or the agents or as-

1 signs of the Federal or State agency acting to inves-
2 tigate medicare or medicaid fraud.

3 (5) The Internal Revenue Service or a State or
4 municipal taxing authority, or a State department of
5 motor vehicles, or any of the agents or assigns of
6 these Federal, State, or municipal agencies acting to
7 investigate or collect delinquent taxes or unpaid
8 court orders or to fulfill any of their other statutory
9 responsibilities.

10 (6) The use of consumer credit information for
11 the purposes of prescreening as provided for by the
12 Federal Fair Credit Reporting Act (15 U.S.C. 1681
13 et seq.).

14 (7) Any person or entity administering a credit
15 file monitoring subscription to which the consumer
16 has subscribed.

17 (8) Any person or entity for the purpose of pro-
18 viding a consumer with a copy of his or her credit
19 report or credit score upon the consumer's request.

20 (h) FEES.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), a consumer credit reporting agency may
23 charge a reasonable fee, as determined by the Com-
24 mission by rule, promulgated in accordance with sec-
25 tion 553 of title 5, United States Code, for placing,

1 removing, or temporarily suspending a security
2 freeze on a consumer's credit report.

3 (2) ID THEFT VICTIMS.—A consumer credit re-
4 porting agency may not charge a fee for placing, re-
5 moving, or temporarily suspending a security freeze
6 on a consumer's credit report if—

7 (A) the consumer is a victim of identity
8 theft;

9 (B) the consumer requests the security
10 freeze in writing;

11 (C) the consumer has filed a police report
12 with respect to the theft, or an identity theft re-
13 port (as defined in section 603(q)(4) of the
14 Fair Credit Reporting Act (15 U.S.C.
15 1681a(q)(4))), within 90 days after the theft
16 occurred or was discovered by the consumer; and

17 (D) the consumer provides a copy of the
18 report to the credit reporting agency.

19 (i) LIMITATION ON INFORMATION CHANGES IN FRO-
20 ZEN REPORTS.—

21 (1) IN GENERAL.—If a security freeze is in
22 place on a consumer's credit report, a consumer
23 credit reporting agency may not change any of the
24 following official information in that credit report
25 without sending a written confirmation of the

1 change to the consumer within 30 days after the
2 change is made:

3 (A) Name.

4 (B) Date of birth.

5 (C) Social Security number.

6 (D) Address.

7 (2) CONFIRMATION.—Paragraph (1) does not
8 require written confirmation for technical modifica-
9 tions of a consumer's official information, including
10 name and street abbreviations, complete spellings, or
11 transposition of numbers or letters. In the case of an
12 address change, the written confirmation shall be
13 sent to both the new address and to the former ad-
14 dress.

15 (j) CERTAIN ENTITY EXEMPTIONS.—

16 (1) AGREGATORS AND OTHER AGENCIES.—The
17 provisions of subsections (a) through (h) do not
18 apply to a consumer credit reporting agency that
19 acts only as a reseller of credit information by as-
20 sembling and merging information contained in the
21 data base of another consumer credit reporting
22 agency or multiple consumer credit reporting agen-
23 cies, and does not maintain a permanent data base
24 of credit information from which new consumer
25 credit reports are produced.

1 (2) OTHER EXEMPTED ENTITIES.—The fol-
2 lowing entities are not required to place a security
3 freeze in a credit report:

4 (A) A check services or fraud prevention
5 services company, which issues reports on inci-
6 dents of fraud or authorizations for the purpose
7 of approving or processing negotiable instru-
8 ments, electronic funds transfers, or similar
9 methods of payments.

10 (B) A deposit account information service
11 company, which issues reports regarding ac-
12 count closures due to fraud, substantial over-
13 drafts, ATM abuse, or similar negative informa-
14 tion regarding a consumer, to inquiring banks
15 or other financial institutions for use only in re-
16 viewing a consumer request for a deposit ac-
17 count at the inquiring bank or financial institu-
18 tion.

19 **SEC. 5. ENFORCEMENT.**

20 (a) ENFORCEMENT BY COMMISSION.—Except as pro-
21 vided in subsection (c), this Act shall be enforced by the
22 Commission.

23 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
24 PRACTICE.—The violation of any provision of this Act
25 shall be treated as an unfair or deceptive act or practice

1 proscribed under a rule issued under section 18(a)(1)(B)
2 of the Federal Trade Commission Act (15 U.S.C.
3 57a(a)(1)(B)).

4 (c) ENFORCEMENT BY CERTAIN OTHER AGEN-
5 CIES.—Compliance with this Act shall be enforced
6 under—

7 (1) section 8 of the Federal Deposit Insurance
8 Act (12 U.S.C. 1818), in the case of—

9 (A) national banks, and Federal branches
10 and Federal agencies of foreign banks, by the
11 Office of the Comptroller of the Currency;

12 (B) member banks of the Federal Reserve
13 System (other than national banks), branches
14 and agencies of foreign banks (other than Fed-
15 eral branches, Federal agencies, and insured
16 State branches of foreign banks), commercial
17 lending companies owned or controlled by for-
18 eign banks, and organizations operating under
19 section 25 or 25A of the Federal Reserve Act
20 (12 U.S.C. 601 and 611), by the Board; and

21 (C) banks insured by the Federal Deposit
22 Insurance Corporation (other than members of
23 the Federal Reserve System) and insured State
24 branches of foreign banks, by the Board of Di-

1 rectors of the Federal Deposit Insurance Cor-
2 poration;

3 (2) section 8 of the Federal Deposit Insurance
4 Act (12 U.S.C. 1818), by the Director of the Office
5 of Thrift Supervision, in the case of a savings asso-
6 ciation the deposits of which are insured by the Fed-
7 eral Deposit Insurance Corporation;

8 (3) the Federal Credit Union Act (12 U.S.C.
9 1751 et seq.) by the National Credit Union Adminis-
10 tration Board with respect to any Federal credit
11 union; and

12 (4) the Securities and Exchange Act of 1934
13 (15 U.S.C. 78a et seq.) by the Securities and Ex-
14 change Commission with respect to—

15 (A) a broker or dealer subject to that Act;

16 (B) an investment company subject to the
17 Investment Company Act of 1940 (15 U.S.C.
18 80a-1 et seq.); and

19 (C) an investment advisor subject to the
20 Investment Advisers Act of 1940 (15 U.S.C.
21 80b-1 et seq.).

22 (d) EXERCISE OF CERTAIN POWERS.—For the pur-
23 pose of the exercise by any agency referred to in sub-
24 section (c) of its powers under any Act referred to in that
25 subsection, a violation of this Act is deemed to be a viola-

1 tion of a requirement imposed under that Act. In addition
2 to its powers under any provision of law specifically re-
3 ferred to in subsection (c), each of the agencies referred
4 to in that subsection may exercise, for the purpose of en-
5 forcing compliance with any requirement imposed under
6 this Act, any other authority conferred on it by law.

7 (e) PENALTIES.—

8 (1) IN GENERAL.—Notwithstanding section
9 5(m) of the Federal Trade Commission Act (15
10 U.S.C. 45(m)), the Commission may not obtain a
11 civil penalty under that section for a violation of sec-
12 tion 3 of this Act by a covered entity in excess of—

13 (A) \$11,000 for each such individual; and

14 (B) \$11,000,000 in the aggregate for all
15 such individuals with respect to the same viola-
16 tion by that covered entity.

17 (2) OTHER AUTHORITY NOT AFFECTED.—Noth-
18 ing in this Act shall be construed to limit or affect
19 in any way the Commission's authority to bring en-
20 forcement actions or take any other measure under
21 the Federal Trade Commission Act (15 U.S.C. 41 et
22 seq.) or any other provision of law.

23 (f) NO PRIVATE CAUSE OF ACTION.—Nothing in this
24 Act establishes a private cause of action against a covered
25 entity for the violation of any provision of this Act.

1 (g) COMPLIANCE WITH GRAMM-LEACH-BLILEY
2 ACT.—Any covered entity is deemed to be in compliance
3 with the notification requirements of this Act with respect
4 to any breach of security for which it complies with re-
5 quirements regarding notification established for such en-
6 tities under title V of the Gramm-Leach-Bliley Act (15
7 U.S.C. 6801 et seq.). Any covered entity is deemed to be
8 in compliance with the requirements of this Act to protect
9 sensitive personal information with respect to any such in-
10 formation for which it complies with the information pro-
11 tection requirements established for such entities under
12 title V of that Act and under section 615(e) of the Fair
13 Credit Reporting Act (15 U.S.C. 1681m(e)).

14 **SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

15 (a) IN GENERAL.—A State, as *parens patriae*, may
16 bring a civil action on behalf of its residents in an appro-
17 priate district court of the United States to enforce the
18 provisions of this Act, to obtain damages, restitution, or
19 other compensation on behalf of such residents, or to ob-
20 tain such further and other relief as the court may deem
21 appropriate, whenever the attorney general of the State
22 has reason to believe that the interests of the residents
23 of the State have been or are being threatened or adversely
24 affected by a covered entity that violates this Act or a reg-
25 ulation under this Act.

1 (b) NOTICE.—The State shall serve written notice to
2 the Commission (or other appropriate Federal regulator
3 under section 5) of any civil action under subsection (a)
4 at least 60 days prior to initiating such civil action. The
5 notice shall include a copy of the complaint to be filed
6 to initiate such civil action, except that if it is not feasible
7 for the State to provide such prior notice, the State shall
8 provide such notice immediately upon instituting such civil
9 action.

10 (c) AUTHORITY TO INTERVENE.—Upon receiving the
11 notice required by subsection (b), the Commission (or
12 other appropriate Federal regulator under section 5) may
13 intervene in such civil action and upon intervening—

14 (1) be heard on all matters arising in such civil
15 action; and

16 (2) file petitions for appeal of a decision in such
17 civil action.

18 (d) CONSTRUCTION.—For purposes of bringing any
19 civil action under subsection (a), nothing in this section
20 shall prevent the attorney general of a State from exer-
21 cising the powers conferred on the attorney general by the
22 laws of such State to conduct investigations or to admin-
23 ister oaths or affirmations or to compel the attendance
24 of witnesses or the production of documentary and other
25 evidence.

1 (e) VENUE; SERVICE OF PROCESS.—In a civil action
2 brought under subsection (a)—

3 (1) the venue shall be a judicial district in
4 which—

5 (A) the covered entity operates;

6 (B) the covered entity was authorized to do
7 business; or

8 (C) where the defendant in the civil action
9 is found;

10 (2) process may be served without regard to the
11 territorial limits of the district or of the State in
12 which the civil action is instituted; and

13 (3) a person who participated with a covered
14 entity in an alleged violation that is being litigated
15 in the civil action may be joined in the civil action
16 without regard to the residence of the person.

17 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
18 ACTION IS PENDING.—If the Commission (or other appro-
19 priate Federal agency under section 5) has instituted a
20 civil action or an administrative action for violation of this
21 Act, no State attorney general, or official or agency of a
22 State, may bring an action under this subsection during
23 the pendency of that action against any defendant named
24 in the complaint of the Commission or the other agency
25 for any violation of this Act alleged in the complaint.

1 (g) ENFORCEMENT OF STATE LAW.—Except as pro-
2 vided in section 7, nothing in this section prohibits an au-
3 thorized State official from proceeding in State court to
4 enforce a civil or criminal statute of such State that is
5 in effect on the date of enactment of this Act.

6 **SEC. 7. PREEMPTION OF STATE LAW.**

7 (a) IN GENERAL.—This Act preempts any State or
8 local law, regulation, or rule that requires a covered enti-
9 ty—

10 (1) to develop, implement, maintain, or enforce
11 information security programs to which this Act ap-
12 plies; or

13 (2) to notify individuals of breaches of security
14 pertaining to them.

15 (b) LIABILITY.—This Act preempts any State or local
16 law, regulation, rule, administrative procedure, or judicial
17 precedent under which liability is imposed on a covered
18 entity for failure—

19 (1) to implement and maintain an adequate in-
20 formation security program; or

21 (2) to notify an individual of any breach of se-
22 curity pertaining to any sensitive personal informa-
23 tion about that individual.

24 (c) SECURITY FREEZE.—This Act preempts any
25 State or local law, regulation, or rule that requires con-

1 sumer reporting agencies to comply with a consumer's re-
2 quest to place, remove, or temporarily suspend a prohibi-
3 tion on the release by a consumer reporting agency of in-
4 formation from its files on that consumer.

5 (d) SOCIAL SECURITY NUMBERS.—Section 8 of this
6 Act, and the amendments made by that section, preempt
7 any State or local law, regulation, or rule prohibiting or
8 limiting the solicitation, sale, or use of Social Security ac-
9 count numbers.

10 **SEC. 8. SOCIAL SECURITY NUMBER PROTECTION.**

11 (a) PROHIBITION OF UNNECESSARY SOLICITATION
12 OF SOCIAL SECURITY NUMBERS.—

13 (1) IN GENERAL.—No covered entity may so-
14 licit a social security number from an individual un-
15 less there is a specific use of the social security num-
16 ber for which no other identifier reasonably can be
17 used.

18 (2) EXCEPTIONS.—Paragraph (1) does not
19 apply to the solicitation of a social security num-
20 ber—

21 (A) for the purpose of obtaining a con-
22 sumer report for any purpose permitted under
23 the Fair Credit Reporting Act (15 U.S.C. 1681
24 et seq.),

1 (B) by a consumer reporting agency for
2 the purpose of authenticating or obtaining ap-
3 propriate proof of a consumer's identity, as re-
4 quired under that Act;

5 (C) for any purpose permitted under sec-
6 tion 502(e) of the Gramm-Leach-Bliley Act (15
7 U.S.C. 6802(e)); or

8 (D) to identify or locate missing or ab-
9 ducted children, witnesses, criminals and fugi-
10 tives, parties to lawsuits, parents delinquent in
11 child support payments, organ and bone mar-
12 row donors, pension fund beneficiaries, and
13 missing heirs.

14 (b) PROHIBITION OF THE DISPLAY OF SOCIAL SECU-
15 RITY NUMBERS ON EMPLOYEE IDENTIFICATION CARDS,
16 ETC.—

17 (1) IN GENERAL.—No covered entity may display the
18 social security number (or any derivative of such number)
19 of an individual on any card or tag that is commonly pro-
20 vided to employees (or to their family members), faculty,
21 staff, or students for purposes of identification.

22 (2) DRIVER'S LICENSES.—A State may not display
23 the social security number of an individual on driver's li-
24 censes issued by that State.

1 (c) PROHIBITION OF INMATE ACCESS TO SOCIAL SE-
2 curity ACCOUNT NUMBERS.—

3 (1) IN GENERAL.—Section 205(c)(2)(C) of the
4 Social Security Act (42 U.S.C. 405(c)(2)(C)), as
5 amended by subsection (b), is amended by adding at
6 the end the following new clause:

7 “(xi) No executive, legislative, or judicial agency or
8 instrumentality of the Federal Government or of a State
9 or political subdivision thereof (or person acting as an
10 agent of such an agency or instrumentality) may employ,
11 or enter into a contract for the use or employment of, in-
12 mates in any capacity that would allow such inmates ac-
13 cess to the social security account numbers of other indi-
14 viduals. For purposes of this clause, the term ‘inmate’
15 means an individual who is confined in a jail, prison, or
16 other penal institution or correctional facility, serving
17 community service as a term of probation or parole, or
18 serving a sentence through a work-furlough program.”.

19 (2) TREATMENT OF CURRENT ARRANGE-
20 MENTS.—In the case of—

21 (i) prisoners employed as described in
22 clause (xi) of section 205(c)(2)(C) of the
23 Social Security Act (42 U.S.C.
24 405(c)(2)(C)), as added by paragraph (1),
25 on the date of enactment of this Act, and

1 (ii) contracts described in such clause
2 in effect on such date,
3 the amendment made by this section shall take
4 effect 90 days after the date of enactment of
5 this Act.

6 **SEC. 9. INFORMATION SECURITY WORKING GROUP.**

7 (a) INFORMATION SECURITY WORKING GROUP.—
8 The Chairman of the Commission shall establish an Infor-
9 mation Security Working Group to develop best practices
10 for covered entities to protect sensitive personal informa-
11 tion stored and transferred. The Working Group shall be
12 composed of industry participants, consumer groups, and
13 other interested parties.

14 (b) REPORT.—Not later than 12 months after the
15 date on which the Working Group is established under
16 subsection (a) and annually thereafter, the Working
17 Group shall submit to Congress a report on their findings.

18 (c) TERMINATION.—The Commission, after notifying
19 the Congress in writing of its intent to terminate the
20 Working Group, may terminate it after the Commission de-
21 termines that the work and annual reports are no longer
22 necessary.

23 **SEC. 10. DEFINITIONS.**

24 In this Act:

1 (1) BREACH OF SECURITY.—The term “breach
2 of security” means unauthorized access to and ac-
3 quisition of data in any form or format containing
4 sensitive personal information that compromises the
5 security or confidentiality of such information and
6 creates a reasonable risk of identity theft.

7 (2) COMMISSION.—The term “Commission”
8 means the Federal Trade Commission.

9 (3) CONSUMER CREDIT REPORTING AGENCY.—
10 The term “consumer credit reporting agency” means
11 any person which, for monetary fees, dues, or on a
12 cooperative nonprofit basis, regularly engages in
13 whole or in part in the practice of assembling or
14 evaluating consumer credit information or other in-
15 formation on consumers for the purpose of fur-
16 nishing credit reports to third parties, and which
17 uses any means or facility of interstate commerce
18 for the purpose of preparing or furnishing credit re-
19 ports.

20 (4) COVERED ENTITY.—The term “covered en-
21 tity” means a sole proprietorship, partnership, cor-
22 poration, trust, estate, cooperative, association, or
23 other commercial entity, and any charitable, edu-
24 cational, or nonprofit organization, that acquires,
25 maintains, or utilizes sensitive personal information.

1 (5) CREDIT REPORT.—The term “credit report”
2 means a consumer report, as defined in section
3 603(d) of the Federal Fair Credit Reporting Act (15
4 U.S.C. 1681a(p)), that is used or expected to be
5 used or collected in whole or in part for the purpose
6 of serving as a factor in establishing a consumer’s
7 eligibility for credit for personal, family or household
8 purposes.

9 (6) IDENTITY THEFT.—The term “identity
10 theft” means the unauthorized acquisition, purchase,
11 sale, or use by any person of an individual’s sensitive
12 personal information that—

13 (A) violates section 1028 of title 18,
14 United States Code, or any provision of State
15 law in *pari materia*; or

16 (B) results in economic loss to the indi-
17 vidual whose sensitive personal information was
18 used.

19 (7) REASONABLE RISK OF IDENTITY THEFT.—
20 The term “reasonable risk of identity theft” means
21 that the preponderance of the evidence available to
22 the covered entity that has experienced a breach of
23 security establishes that identity theft for 1 or more
24 individuals from the breach of security is foreseeable.

1 (8) REVIEWING THE ACCOUNT.—The term “re-
2 viewing the account” includes activities related to
3 account maintenance, monitoring, credit line in-
4 creases, and account upgrades and enhancements.

5 (9) SENSITIVE PERSONAL INFORMATION.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraphs (B) and (C), the term “sensitive
8 personal information” means an individual’s
9 name, address, or telephone number combined
10 with 1 or more of the following data elements
11 related to that individual:

12 (i) Social security number, taxpayer
13 identification number, or employer identi-
14 fication number.

15 (ii) Financial account number, or
16 credit card or debit card number of such
17 individual, combined with any required se-
18 curity code, access code, or password that
19 would permit access to such individual’s
20 account.

21 (iii) State driver’s license identifica-
22 tion number or State resident identifica-
23 tion number.

24 (B) FTC MODIFICATIONS.—The Commis-
25 sion may, through a rulemaking proceeding in

1 accordance with section 553 of title 5, United
2 States Code, designate other identifying infor-
3 mation that may be used to effectuate identity
4 theft as sensitive personal information for pur-
5 poses of this Act and limit or exclude any infor-
6 mation described in subparagraph (A) from the
7 definition of sensitive personal information for
8 purposes of this Act.

9 (C) PUBLIC RECORDS.—Nothing in this
10 Act prohibits a covered entity from obtaining,
11 aggregating, or using sensitive personal infor-
12 mation it lawfully obtains from public records
13 in a manner that does not violate this Act.

14 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated to the Com-
16 mission \$1,000,000 for each of fiscal years 2006 through
17 2010 to carry out this Act.

18 **SEC. 12. RELATED CRIME STUDY.**

19 (a) IN GENERAL.—The Federal Trade Commission,
20 in conjunction with the Department of Justice and other
21 Federal agencies, shall undertake a study of—

22 (1) the correlation between methamphetamine
23 use and identity theft crimes;

24 (2) the needs of law enforcement to address
25 methamphetamine crimes related to identity theft,

1 including production, trafficking, and the purchase
2 of precursor chemicals; and

3 (3) the Federal Government's role in addressing
4 and deterring identity theft crimes.

5 (b) REPORT.—Not later than 18 months after the
6 date of enactment of this Act, the Federal Trade Commis-
7 sion shall submit a report of its findings and recommenda-
8 tions to the Congress that includes—

9 (1) a detailed analysis of the correlation be-
10 tween methamphetamine use and identity theft
11 crimes;

12 (2) the needs of law enforcement to address
13 methamphetamine crimes related to identity theft:
14 including production, trafficking, and the purchase
15 of precursor chemicals related to methamphetamine;

16 (3) the Federal Government's role in addressing
17 and deterring identity theft crimes; and

18 (4) specific recommendations for means of re-
19 ducing and preventing crimes involving methamphet-
20 amine and identity theft, including recommendations
21 for best practices for local law enforcement agencies.

22 **SEC. 13. EFFECTIVE DATES.**

23 (a) IN GENERAL.—Except as provided in subsections
24 (b) and (c), the provisions of this Act take effect upon
25 its enactment.

1 (b) IMPLEMENTATION OF SECURITY PROGRAM.—A
2 covered entity shall implement the program required by
3 section 2(a) within 6 months after the date of enactment
4 of this Act.

5 (c) PROVISIONS REQUIRING RULEMAKING.—The
6 Commission shall initiate 1 or more rulemaking pro-
7 ceedings under sections 2(c), 3, and 4 within 45 days after
8 the date of enactment of this Act. The Commission shall
9 promulgate all final rules pursuant to those rulemaking
10 proceedings within 1 year after the date of enactment of
11 this Act. The provisions of sections 2(c), 3, and 4 shall
12 take effect on the same date 6 months after the date on
13 which the Commission promulgates the last final rule
14 under the proceeding or proceedings commenced under the
15 preceding sentence.

16 (c) PREEMPTION.—Section 7 shall take effect at the
17 same time as sections 2(c), 3, and 4 take effect.

